Asylum Policy: Religious Persecution

Presented by

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Ting Xue v. Sessions

TENG XVZ.

Petitioner.

JEFFERSON B. SESSIONE III.

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

PETITION FOR A WRIT OF CERTIORARI

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Petition A WRIT OF CERTIORARI

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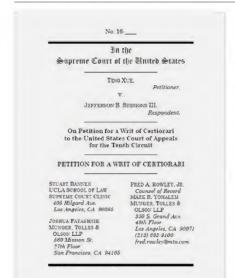
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60 Aussion St. 7th Floor an Francisco, CA 94105

- For attending an unregistered house church, Xue was
 - arrested
 - beaten
 - jailed for three days and four nights
 - forced to pay a major fine
 - required to take reeducation classes, and
 - warned not to attend illegal church meetings.
- The IJ credited his testimony but denied his asylum petition, saying his fears of future persecution "do[] not amount to more than a restriction on [his] liberty and thus do[] not rise to the level of persecution."
- The BIA affirmed.

Ting Xue v. Sessions



- The Tenth Circuit held that the "level of harassment" Xue experienced – "ordered, under threat of penalty, to stop practicing his religion" – was not "persecution" under 8 U.S.C. § 1101(a)(42)(A).
- Xue petitioned for certiorari in the U.S.
 Supreme Court, but his case settled.

The Key Issue



- The meaning of the phrase "well-founded fear of persecution" "on account of" "religion."
 8 U.S.C. § 1101(a)(42)(A).
- The INA's text refers to
 - "persecution," not to "severe persecution"
 - "religion," not "religious belief"
- Persecution on account of "religion" entails communal and public religious exercise, not simply "religious belief."

The Majority View

Muhur v. Ashcroft, 355 F.3d 958 (7th Cir. 2004)

"One aim of persecuting religion is to drive its adherents underground in the hope that their beliefs will not infect the remaining populations."

Zhang v. Ashcroft, 388 F.3d 713 (9th Cir. 2004) (per curiam)

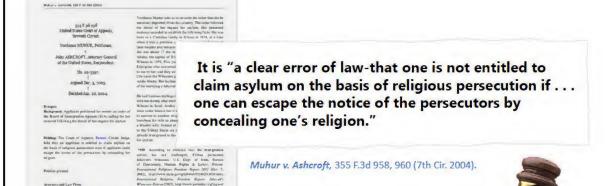
"to require [a Falon Gong petitioner] to practice his beliefs in secret" to "avoid persecution" is contrary to our basic principles of religious freedom and the protection of religious refugees."

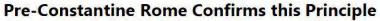
Kazemzadeh v. U.S. Att'y Gen., 577 F.3d 1341 (11th Cir. 2009)

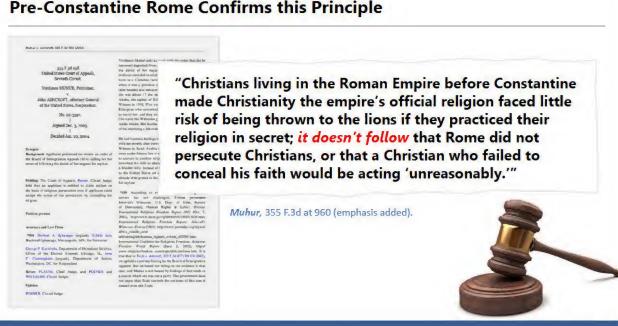
"having to practice religion underground to avoid punishment is itself a form of persecution."

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Concealing Religion to Avoid Persecution is still Religious Persecution







Pre-Constantine Rome Confirms this Principle

Millur v. Asmerett, 286 F.3a 968 (2004

"One aim of persecuting a religion is to drive its adherents underground in the hope that their beliefs will not infect the remaining population."

Muhur, 355 F.3d at 961.

 The same rationale that drove pre-Constantine Rome undergirds China's policy towards Christianity and Falun Gong and is pervasive worldwide.





The First Amendment and the Free Exercise of Religion

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof..."

U.S. Const., Amend. 1

RFRA and RLUIPA Interpretation of Religious Exercise

"The term 'religious exercise' includes any exercise of religion, whether or not compelled by, or central to, a system of religious belief."

42. U.S.C. § **2000cc-5** (2012)

 Both statutes require sincerity—thus, sham claims must be weeded out at the outset.

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DOJ AG Memo Guidance on Religious Freedom (October 6, 2017)



Office of the Attorney General Washington, D. €. 20630

MEMORANDUM FOR ALL EXECUTIVE DEPARTMENTS AND AGENCIES
FROM THE ATTORNEY GENERAL
SUBJECT: Existed Line Processions for Annaeum Library

The President has instructed on an usual guidance interpressing erligious liberty posteriors formed but, as appropriate. Exec. Order No. 13795 § 4, 42 Fed. Rog. 21675 (May 4, 2017), switters with that instructions. I am issuing this memoritations and appealist to guide all instructions and executive departments in the executions of folderal pariettestive regions and executive departments in the executions of folderal pariettestive agencies.

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Titures Hardoos, Nomenal and Remonstrates Against Religious Assessment (June 20, 1783), in 3 Tel Fc Conceptivesm 32 (Plain R. Katlani & Ratch Lanut etc., 1947).

"The Free Exercise Clause protects not just the right to believe or the right to worship; it protects the right to perform or abstain from performing certain physical acts in accordance with one's beliefs."

Mem. at 2 (relying on RFRA).

Directing all Departments to "vigorously enforce Federal law's robust protections for religious freedom."

Mem. at 1 (quoting Exec. Order 13798, the Presidential Executive Order Promoting Free Speech and Religious Liberty).

International Religious Freedom Act of 1998

One trundred fifth Congress of the United States of America

AT THE SECOND SESSION

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"Even more abhorrent, religious believers in many countries face [] severe and violent forms of religious persecution In many countries, religious believers are forced to meet secretly, and religious leaders are targeted by national security forces and hostile mobs."

22 U.S.C. § 6401(a)(5) (emphasis added).

"The term 'violations of religious freedom' means violations of the internationally recognized right to freedom of religion and religious belief and practice," "including ... (i) assembling for peaceful religious activities such as worship, preaching, and prayer, including arbitrary registration requirements; (ii) speaking freely about one's religious beliefs."

22 U.S.C. § 6402(16).

International Norms Reject the Distinction between Belief and Practice

The United Nations has long accepted the principle that religious beliefs are not separate from religious practice.



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International Norms Reject the Distinction between Belief and Practice



• Universal Declaration of Human Rights, art. 18 (1948):

"Everyone has the right to freedom of ... religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance."

World of Faith and Freedom



 Advancing religious freedom successfully in our foreign policy can help victims of religious persecution abroad and increase the security of the American people.